

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BANK OF AMERICA, N.A.,

Plaintiff(s),

v.

LAKE LAS VEGAS SOUTHSORE  
RESIDENTIAL COMMUNITY  
ASSOCIATION,

Defendant(s).

Case No. 2:13-CV-1819 JCM (GWF)

ORDER

Presently before the court is defendant Poshbaby LLC's motion to dismiss. (ECF No. 45). Plaintiff Bank of America filed a response (ECF No. 64), and defendant filed a reply. (ECF No. 70).

In its opposition to the motion to dismiss, plaintiff argues that retroactively applying the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), violates the mortgagee's due process rights. (ECF No. 64). In their briefing, the parties dispute the issue of whether Nevada Revised Statute 116.3116 is facially unconstitutional. (ECF Nos. 45, 64, 70).

A party that files a motion calling into question the constitutionality of a state statute must promptly "file a notice of constitutional question stating the question and identifying the paper that raises it, if . . . the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity . . . ." Fed. R. Civ. P. 5.1(a)(1)(B).

The party must serve the notice on the state attorney general "by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose." Fed. R. Civ. P. 5.1(a)(2). Plaintiff has provided no proof of compliance with this rule.

1 Rule 5.1 also requires the court to “certify to the appropriate attorney general that a statute  
2 has been questioned” under 28 U.S.C. § 2403. Fed. R. Civ. P. 5.1(b). This statute provides that  
3 the court “shall permit the State to intervene for presentation of evidence, if evidence is otherwise  
4 admissible in the case, and for argument on the question of constitutionality.” 28 U.S.C. § 2403(b).

5 In light of the foregoing rule and statute, the court will deny the defendant’s motion to  
6 dismiss without prejudice to allow plaintiff to comply and the attorney general to intervene. The  
7 parties may renew their motions after the attorney general has been afforded time to appear.

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion to  
10 dismiss (ECF No. 45), be, and the same hereby is, DENIED without prejudice.

11 IT IS FURTHER ORDERED that plaintiff shall provide notice to the Nevada attorney  
12 general in compliance with Federal Rule of Civil Procedure 5.1, and include proof of such notice  
13 upon filing any further motions raising constitutional challenges.

14 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it  
15 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The  
16 attorney general shall have thirty (30) days within which to intervene on behalf of the state of  
17 Nevada for presentation of argument on the question of the constitutionality of the statute.

18 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by  
19 certified mail to the Nevada attorney general.

20 DATED June 9, 2016.

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22 UNITED STATES DISTRICT JUDGE  
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